

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
November 29, 2005**

Place: Auditorium
Town Hall

TIME: 8:00 PM

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Conze, Forman, Kenny, Spain, Bigelow

STAFF ATTENDING: Ginsberg, Keating
COURT RECORDER: Beler

At 8:00 P.M., Chairman Damanti read the first agenda item:

PUBLIC HEARING

Continuation of Public Hearing Regarding Proposed Amendment to the Darien Zoning Map, Peter Ike/1915 Post Rd, LLC, 1909-1915 Boston Post Road. Proposing to amend the Darien Zoning Map to rezone a portion of the subject property (approximately 8,542 square feet) from Residential (R-1/3) to Neighborhood Business (NB). The subject property is located on the north side of Boston Post Road approximately 145 feet west of its intersection with Dickinson Road, and is shown on Assessor's Map #42 as Lot #5, in the NB and R-1/3 Zones.
The Public Hearing for this application was opened on September 27, 2005 and continued to October 25, 2005.

Mr. Damanti said that this Public Hearing will be continued to January 3, 2006 at 8 p.m. in Room 206 of Town Hall.

Mr. Damanti then read the next agenda item.

Continuation of Public Hearing regarding Application for Approval of Affordable Housing, Coastal Site Plan Review #150-A, Land Filling & Regrading Application #147, Christopher and Margaret Stefanoni, 77 Nearwater Lane. Proposing to raze the existing residence and to construct 20 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in two new buildings with associated parking and regrading, and to perform related site development activities within a regulated area. The subject property is located on the west side of Nearwater Lane approximately 300 feet south of the intersection of Nearwater Lane and Nickerson Lane, and is shown on Assessor's Map #52 as Lot #5, R-1 Zone. *The Public Hearing for this application was opened on November 1, 2005.*

Ms. Margaret Stefanoni was present and submitted a letter to respond to matters brought up at the last Public Hearing. She said that relative to traffic, there is no log of vehicles entering Weed Beach. She said that her traffic consultant did a summer count to account for beach traffic, and a fall count to account for school traffic. She noted that the parking on Nearwater Lane should not be permitted due to the narrow condition of the street, and that she believed that such restrictions should apply to the entire street, not just in front of her proposed project, Nearwater Manor. She

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noted the concerns about the use of fertilizers and pesticides, and said that she has no problem with not using chemicals on site. She is willing to report annually to the Planning and Zoning Commission about maintaining her stormwater system. She said that she reviewed the email from Attorney Tim Hollister and said that the sales price she arrived at was based upon the Connecticut DECD formula. She noted that it makes a difference what the anticipated monthly expenses are and current interest rate—whether it be 6% or 7%. Ms. Stefanoni mentioned that the lower the interest rate, the higher the price. The exact details would have to be calculated at the time of sale. DECD told her that it acknowledges that as long as it is an available interest rate, it is acceptable, and the variables in the formula will certainly fluctuate over time.

Relative to the issue of impact on property values, Ms. Stefanoni explained that the MIT study of properties in Massachusetts for projects of similar type covered 21 years and 36,000 property transactions. The MIT study selected seven projects within the Boston area and found that there was no depreciation of the surrounding single family houses. She understands that was Massachusetts and this is Connecticut. However, there are similar concerns and issues. Ms. Stefanoni said that she just received a packet this afternoon regarding possible jurisdiction of the Darien Environmental Protection Commission. She noted that she approached the Environmental Protection Commission (EPC) in 2002, 2003, and 2004. Each time the EPC decided that they had no jurisdiction over her property. She explained that a petition was signed by 200 residents, which also requested that EPC assert jurisdiction, but she believed that this is a ruse to oppose affordable housing on her property.

Mr. Damanti stated that Ms. Stefanoni should check the record of the Planning and Zoning Commission regarding the four previous affordable housing applications in Darien. He believed that the Commission has acted responsibly, and modified and approved proposals for affordable housing throughout the community. Ms. Stefanoni responded that she did not mean to imply that the Planning and Zoning Commission is trying to stop the application.

Landscape Architect Stuart Sachs then explained the proposal and responded to concerns. He noted that the westernmost light pole would be about 25 feet from the property line. He had submitted an illumination plan from the manufacturer, and the lights will be sharp-cut shielded or low bollards. He said that the point source lumen calculation drawing was submitted, and the trees to be planted will also help screen light sources.

Mr. Berry Hammons, Professional Engineer and Surveyor, said that he had received the letter from DEP's John Gaucher on the day of the previous hearing. He has now had an opportunity to speak with Mr. Gaucher, and has revised the Grading and Utilities Plan to respond to Mr. Gaucher's concerns. They have addressed the issues of both water quantity and water quality. Mr. Hammons noted that the eastern edge of the site is Paxton soil, which is not well drained, so no infiltration was factored in for that area. Other portions of the site are better drained, so they used a modest percolation rate. Mr. Hammons said that there are now about 2000 square feet of impervious surface on the site, but for the purpose of his calculations, they assumed that there are currently no impervious square feet on the property. They then reduced the flow rate so that the peak rate of discharge flow is not increased for all sizes of design storms. The catch basins in the driveways will be changed to have solid sumps then water to treatment, rather than into the sumps under the catch basin. The roof water will go to a treatment basin for sediments and oil, then into infiltrators. He reiterated that water quality and water quantity issues have both been addressed. They have used Best Management Practices (BMPs) in this design.

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Ms. Stefanoni then noted that her traffic consultant was present this evening to answer any questions the Commission might have regarding his testimony. There were none.

State Senator Andrew McDonald explained that he was a State Senator from the 27th District, which includes parts of Darien. He noted that there have been many attempts to amend the State statutes regarding affordable housing. He believed, however, that the Statutes never intended to obliterate local zoning, but rather intended to prevent discriminatory use of zoning to preclude affordable housing. He said that a few years ago, the people of Darien knew that AvalonBay Communities would construct an affordable housing project, and the townspeople voted not to buy the site, but rather to allow the affordable housing project to be constructed. He said that the applicants propose 20 units on site, six of which would be affordable. He believed that any segregation of the six affordable units would do violence to the State statute and court decisions regarding affordable housing. In addition, the applicant must guarantee that the affordable units remain affordable long after they are built.

Ms. Stefanoni then responded to Mr. McDonald's comments. She noted that the six affordable units are in the elegant main building, not the barn in the rear. She said that the DECD formula makes the two-bedroom units more expensive than the one-bedroom units. The 1,000 square foot, one-bedroom units will be 40% less expensive than the two-bedroom unit of the same size. They are trying to make the units more affordable rather than more expensive. She added that one of the affordable units probably has the best view, but she is willing to change the designation of which units are affordable if the Commission requires such.

Mr. Spain then asked if there is any operating plan and/or budget for the project.

Ms. Stefanoni responded that applicants had none and that she cannot control the future costs of condominium association fees or oil prices, but that the units will be restricted through deed restrictions. The deed restrictions will control the resale prices and/or the lease prices for the affordable units. She said that the units will be restricted for the next 40 years as specifically required by the State statutes.

Mr. Spain said that he wishes to see a feasibility plan and a financial plan for going into the future in order to comply with the State Statutes. He wanted to know how it will get built and operated in continual compliance with the Statutes. He said that he does not have any information to illustrate that the applicant can make this project work, and that the applicant cannot just set up the project and walk away from it.

Attorney Bruce Hill said that he was present representing Ian Duncan, a direct neighbor to this proposed project. He is also co-counsel with Robinson & Cole representing other neighbors of the project. He said that under Section 8-3g of the Connecticut General Statutes, an inland wetlands (Environmental Protection Commission) permit application needs to be submitted with or before the submission of a Planning and Zoning Commission application. He therefore believed that there was a sequencing problem causing a jurisdictional problem for the Planning and Zoning Commission. He then introduced professional engineer Joseph Risoli of Risoli Planning and Engineering from Riverside, CT.

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Mr. Risoli then referred to Map 1 which shows the Otto Theall 2002 Map and the area within 100 feet of Holly Pond. Map 2 shows the Wetlands line per Tom Pietras' soil testing.

Mr. Hill then referred to the Robinson & Cole memorandum and the attached reports.

Mr. Hill said that the contaminants from the parking lot will not be properly filtered out by the proposed drainage system and that the system will fail and cause pollution which will flow into the marsh and Holly Pond. He claimed that the age-restricted aspect of their proposal is a sham, and it will be unenforceable. He then submitted a legislative history excerpt regarding the affordable housing statutes. Mr. Hill continued by noting that Section 8-30g of the Connecticut General Statutes reflects a historical resistance by some municipalities to affordable housing. The Statutes result in the fact that the local Zoning Regulations cannot be used as a roadblock to affordable housing. The application would have the Commission abandon the Zoning Regulations and liberally quote from a court case to try to create the impression of a blanket exemption where none exists. The legislation does not exempt affordable housing from Section 8-2 and 8-3 zoning purposes. The affordable aspect of this is of little concern to the neighbors, it is the impact of the buildings. Mr. Hill continued, and noted that the project appears to be designed to do the maximum harm to the neighbors. He submitted two newspaper clippings from the New York Times and a local Darien paper. He said that the motive of the application is irrelevant, as the Stefanonis are a "for-profit" enterprise, and not a non-profit housing agency. He then referred to the legislative history, and said that representative Bolster said that affordable housing should not stick out and be noticeable.

Hiram Peck, a professional planner for 22 years, then spoke. He said that the Commission should consider balance, and this is not a balanced application. He said that it is not in compliance with the Town Plan of Conservation and Development; not in compliance with local zoning; and not in compliance with the Coastal Area Management Act. He noted that a variety of documents and information were missing from the application, including: an EPC application; details about the feasibility of the project; schedules and deadline; a complete affordability plan and a Flood Damage Prevention application. Mr. Peck asked how the Town would proceed if there is a violation of the affordability requirements. There is no proof of the viability of the project, and the marketing plan is incomplete. They should address the issue of children more specifically. He added that the proposal is clearly incompatible with portions of the Plan of Conservation and Development. Off-street parking is also an issue as is the lack of open space. He noted that the project violates front, side and rear yard setbacks, and height and parking regulations. The sidewalks in the area are really an important issue. He added that a Flood Damage Prevention permit is needed, and that failure to require said permit could endanger the community standing in the National Flood Insurance Program. He said that the density proposed is 20 times that which is now allowed, and based upon the deficiencies, the application must be denied. He then submitted a document with his comments.

Mr. Hill then said that the fundamental underpinnings of zoning criteria are not preferences—it is designed for public health and safety. One of the buildings would be ten feet from a property line and forty plus feet tall. There will be a "commercial-like" parking lot just three feet from a neighbor. He then submitted documents including two charts on density, and one on other cases in Connecticut.

At about 10:05 P.M., professional engineer Joseph Risoli handed out a number of maps, plans and charts. He said that the drainage system will work for the first day. He said that oil grit separators

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have little or no effect to cleanse the runoff. His opinion was that the proposed system will not have the time or space to separate the oil and grit, and it will not work. He then reviewed information from the Vortech technical design manual. It notes that 80% of the suspended solids are removed, and 20% goes right through the system, according to the manufacturers specifications. He noted that if any water that reaches the Cultec infiltrators/rechargers and contains any silt or sediment, that material will settle on the bottom which then would make the bottom impermeable. After a while, it will no longer work. There is no reasonable maintenance for these products—one cannot go in and clean them out—they must be dug out to remove the solid soil and rebuild the system. They will fail over time depending on the sand usage on the streets, parking lot and walkways. Mr. Risoli further said that all three systems will fail at this site and uncleansed water will flow into Holly Pond. He said that no calculations were submitted about the impacts of this system on the 15 inch pipe in the street, Nearwater Lane. He concluded by stating that sooner or later even with a good maintenance plan, the system(s) will fail.

At about 10:40 p.m., Mr. Michael Aurelia, a professional wetlands scientist with 30 years of experience then spoke. He said that the tidal wetlands are critical. He estimated that 50% of them have been filled. There is a need to preserve the remainder from development impacts. There are not many tidal wetlands left around Holly Pond. He said that once 25% impervious surface area is exceeded, it really has an impact on coastal resources. He said that the Land Trust area is probably the largest preserved tidal wetland around Holly Pond. He noted that the Phragmites are an invasive plant which invades disturbed areas. The discharge of stormwater also reduces the salinity of the pond and allows these invasive species. This area is a classic high salt marsh. He said that Holly Pond is now an extremely important wildlife habitat and heavy metals in sediments and other contaminants will compromise the tidal marsh of Holly Pond. The Commission should limit development to 25% or less of impervious surface. They should require a 50 foot wide minimum buffer area, and should investigate alternatives to the current design. He noted that this project will advance the problems of impacting this critical coastal resource. Mr. Aurelia then asked where is the edge of Holly Pond. He said that the project is contrary to the CAM Act and will unreasonably pollute the public trust in these resources.

Attorney Wilder Gleason said that he was present on behalf of the Darien Land Trust, a property owner to the south. He said that his presentation would take about 25 minutes. Mr. Damanti noted that due to the late hour, the Commission will need to continue the public hearing on this application. After some discussion, it was agreed to continue the public hearing to Tuesday, December 6, 2005 in the Auditorium of Town Hall at 8 P.M. That motion was made by Ms. Forman and seconded by Mr. Spain. All members voted in favor of the continuance.

There being no other business, the meeting was adjourned at 11:20 P.M.

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director